

David A. Lowe
LOWE GRAHAM JONES
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
206.381.3300

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELF-MAN, LLC,

Civil Action No. 13-cv-00115 TOR

Plaintiff,

DECLARATION OF DAVID A.
LOWE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENTS AND
PERMANENT INJUNCTIONS

C.G. CHINQUE ALBRIGHT, et al.

Defendants.

I, David A. Lowe, declare as follows:

1. I am counsel for Plaintiff Elf-Man, LLC. I make this declaration in support of Plaintiff's motion for default judgments and permanent injunctions. My statements are based on personal knowledge except with respect to those statements relating to matters in this case handled by prior counsel of record, in which my statements are based upon representations made by prior counsel and confirmed, where possible, by my own independent investigation, and as to those matters, I believe them to be true.

2. Service of process of the summons and First Amended Complaint in this action was properly effected on Defendants Dean Barnett, Brenda Barnett, Stephanie Housden, Andrew Lint, Carlos Rodriguez, Rafael Torres and Shannon

**DECLARATION OF DAVID A. LOWE IN SUPPORT OF
MOTION FOR DEFAULT JUDGMENTS AND
PERMANENT INJUNCTIONS - 1**

Civil Action No. 13-cv-00115
INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES PLLC



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

1 Williams, and proof of service on each of these Defendants was filed with the
 2 Court. (Dkt. Nos. 37, 42-47) No response was filed by any of these Defendants
 3 within the time allowed by law. Pursuant to L.R. 55.1(a)(2), notices of Plaintiff's
 4 intent to seek entry of default were sent to each of these Defendants via U.S. Mail.

5 3. To the best of my information and belief, none of the defaulted
 6 Defendants are infants or incompetent persons.

7 4. Based on activity observed related to defaulted Defendants' IP
 8 address and Defendants' apparent non-military residence, after Internet searching
 9 based on the limited information available, Plaintiff does not believe Defendants are
 10 on active duty or subject to the Servicemembers Civil Relief Act of 2003, but is
 11 unable to determine definitively whether or not the Defendants are in the military
 12 service. However, due to Defendants' refusal to respond or communicate with
 13 Plaintiff, Plaintiff is without a date of birth or social security number for definite
 14 verification.

15 5. Because none of the defaulted Defendants have appeared personally
 16 or by a representative, written notice is not required by Fed. R. Civ. P. 55(b)(2).

17 6. I attest that the costs sought to be taxed have been incurred or will
 18 necessarily be incurred.

19 7. I am a member of LOWE GRAHAM JONES^{PLLC}, an actively practicing
 20 attorney in good standing licensed by the State of Washington (WSBA No. 24,453).
 21 I am also admitted to practice before various federal courts, including several U.S.
 22 District Courts, the U.S. Court of Appeals for the Ninth Circuit and the U.S.
 23 Supreme Court.

24 8. I graduated from the University of Washington School of Law. I have
 25 approximately twenty years of active litigation experience in both federal and state
 26 courts throughout the country primarily in the areas of intellectual property,

DECLARATION OF DAVID A. LOWE IN SUPPORT OF
 MOTION FOR DEFAULT JUDGMENTS AND
 PERMANENT INJUNCTIONS - 2

Civil Action No. 13-cv-00115
 INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES^{PLLC}



701 Fifth Avenue, Suite 4800
 Seattle, Washington 98104
 206.381.3300 • F: 206.381.3301

1 specifically including patent, trademark and copyright litigation. I am a member of
 2 the Seattle Intellectual Property American Inn of Court (part of the "Judge Linn
 3 Alliance" of specialty IP Inns of Court). I have been included in the Washington
 4 SuperLawyers list, representing the top 5% of Washington attorneys, each year
 5 since 2007.

6 9. Prior counsel Maureen VanderMay is an attorney admitted to practice
 7 in the States of Washington, Oregon, California and Hawaii (presently voluntarily
 8 inactive in Hawaii). She is also admitted to practice before various federal courts,
 9 including several U.S. District Courts, the U.S. Court of Appeals for the Ninth
 10 Circuit and the U.S. Supreme Court.

11 10. Ms. VanderMay graduated from the University of Chicago Law
 12 School in 1985 and then served as a clerk to the Hon. Alfred T. Goodwin, United
 13 States Court of Appeals for the Ninth Circuit. After several years of practicing law
 14 with Perkins Coie in Seattle, Washington, she joined the faculty at the Willamette
 15 University College of Law. While at Willamette, she attained the rank of tenured
 16 professor of law and taught primarily in the areas of administrative and
 17 constitutional law. Since deciding to return to full time legal practice, she has
 18 worked with THE VANDERMAY LAW FIRM in Salem, Oregon. During most of her
 19 academic career, she continued to practice law on a part time basis, both directly for
 20 clients and on a pro bono basis through several entities. Ms. VanderMay has
 21 litigated matters in the state and federal courts in several western states in various
 22 areas of the law, including but not limited to copyright infringement, aviation
 23 litigation, insurance disputes and both the plaintiff and defense sides of personal
 24 injury actions.

25 11. My current and usual hourly rate for intellectual property litigation
 26 matters is \$495, and that of prior counsel Ms. VanderMay is \$450. My legal

DECLARATION OF DAVID A. LOWE IN SUPPORT OF
 MOTION FOR DEFAULT JUDGMENTS AND
 PERMANENT INJUNCTIONS - 3

Civil Action No. 13-cv-00115
 INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES PLLC


 701 Fifth Avenue, Suite 4800
 Seattle, Washington 98104
 206.381.3300 • F: 206.381.3301

1 assistant's rate is \$125 per hour. These rates are commensurate with rates charges in
 2 Washington State for experience intellectual property litigation counsel.

3 12. Both my firm and that of Ms. VanderMay have maintained records
 4 reflecting time spent on this litigation to date. These records have been carefully
 5 reviewed, including actual time records of work performed related directly to
 6 dealing with this case for each Defendant. Set forth below is a true and accurate
 7 reproduction of the time entries compiled from our firms' timekeeping program
 8 reflecting identified billings associated with the litigation to date solely in
 9 connection with Plaintiff's claims against the defaulted Defendants. Because of the
 10 nature, complexity and scope of this action, counsel has spent a considerable
 11 amount of time on this action that is not reflected below. For example, counsel has
 12 not included the time spent in dealing with the Internet Service Providers in
 13 connection with subpoena compliance or in responding to the motions to quash and
 14 other preliminary motions filed prior to service of the First Amended Complaint.
 15 Rather than listing all of the time that we expended on this action, counsel has erred
 16 on the side of exclusion in reporting the time spent in connection with Plaintiff's
 17 claims against the defaulted Defendants. As a result costs and fees to be assessed
 18 against the Defendants and each of them are notably less as the Defendants received
 19 the benefit of being part of a joined case.

20 **David A. Lowe, Esq. Billings for all defaulted Defendants combined**

Date	Hours	Rate	Amount	Description
6.16.14	3.6	\$495	\$1,782.00	Review status of case against Defendant, including service and default proceedings; Outline default judgment strategy, motion and supporting documents

25
 26 DECLARATION OF DAVID A. LOWE IN SUPPORT OF
 MOTION FOR DEFAULT JUDGMENTS AND
 PERMANENT INJUNCTIONS - 4

Civil Action No. 13-cv-00115
 INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES PLLC



701 Fifth Avenue, Suite 4800
 Seattle, Washington 98104
 206.381.3300 • F: 206.381.3301

Date	Hours	Rate	Amount	Description
6.27.14	10.8	\$495	\$5,346.00	Review status of case; Work on motion for entry of default judgment, accompanying declaration and proposed orders
Total:	14.4		\$7,128.00	

Maureen VanderMay Billings for all defaulted Defendants combined

Date	Hours	Rate	Amount	Description
3.26.13	11.2	\$450	\$5,040.00	Draft initial complaint and related documentation; Draft motion for expedited discovery to obtain identifying information and for expedited hearing on same
4.4.13	6.4	\$450	\$2,880.00	Review court order granting motion for expedited discovery; Prepare subpoenas to internet service providers; Arrange for service of subpoenas
8.25.13	3.6	\$450	\$1,620.00	Draft first amended complaint and summons; Arrange for service of process
11.5.13	2.6	\$450	\$1,170.00	Prepare notice of intent to move for entry of default
12.6.13 2.7.14	8.2	\$450	\$3,690.00	Prepare and file motion for entry of default and supporting declaration (Hayes, Kappen, Maxwell) Prepare and file motion for entry of default and supporting declaration (Urena)
5.29.14	3.4	\$450	\$1,530.00	Work on motion or entry of default judgments and supporting declaration
Total:	35.4		\$15,930.00	

DECLARATION OF DAVID A. LOWE IN SUPPORT OF
MOTION FOR DEFAULT JUDGMENTS AND
PERMANENT INJUNCTIONS - 5

Civil Action No. 13-cv-00115
INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES PLLC



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

1 **Caitlin Johnson Billings for all defaulted Defendants combined**

Date	Hours	Rate	Amount	Description
6.25.14	4	\$125	\$500.00	Proof, review, finalize and file entry of default judgment, accompanying declaration and proposed orders
Total:	4		\$500.00	

5 13. The total amount of attorneys' fees claimed in this case for all
 6 defaulted Defendants combined using counsel's normally charged rates is as
 7 follows:

- 8 • David A. Lowe, Esq. 14.4 hours, total \$7,128
- 9 • Maureen VanderMay, Esq. 35.4 hours, total \$15,930
- 10 • Caitlin Johnson 4 hours, total \$500

11 The total using counsel's normally charged rates is: \$23,558 attorney's fees for all
 12 defaulted Defendants combined, or \$3,365 (rounded down) per defaulted
 13 Defendant.

14 14. Plaintiff is not pursuing the apportioned cost of the initial filing fee or
 15 the ISP subpoena service costs as they were divided among the many joined
 16 Defendants. Plaintiff paid \$30 service of process on each defaulted Defendant
 17 (except the two at the same address) along with \$45.52 to ISP Charter for Lint and
 18 Torres subpoena data, \$35 to ISP Fairpoint combined for the Barnetts subpoena
 19 data, \$10 to ISP Century Link for Williams subpoena data, \$60 to ISP Embarq for
 20 Rodriguez subpoena data, and \$39.25 to ISP LocalTel for Housden subpoena data.
 21 Accordingly, Plaintiff is seeking the following costs:

D. Barnett	\$32.50
B. Barnett	\$32.50
Housden	\$69.25
Lint	\$75.52
Rodriguez	\$90

22 DECLARATION OF DAVID A. LOWE IN SUPPORT OF
 23 MOTION FOR DEFAULT JUDGMENTS AND
 24 PERMANENT INJUNCTIONS - 6

25 Civil Action No. 13-cv-00115
 26 INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES PLLC


 701 Fifth Avenue, Suite 4800
 Seattle, Washington 98104
 206.381.3300 • F: 206.381.3301

Torres	\$75.52
Williams	\$40

15. The costs and fees sought in this case have been specifically limited to the time spent for these particular Defendants, and have been specifically apportioned per defaulted Defendant to avoid double billing. I believe the sum requested per defaulted Defendant is both proper and reasonable in light of the nature and extent of this action.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 27th day of June, 2014.

s/David A. Lowe, WSBA No. 24,453

**DECLARATION OF DAVID A. LOWE IN SUPPORT OF
MOTION FOR DEFAULT JUDGMENTS AND
PERMANENT INJUNCTIONS - 7**

Civil Action No. 13-cv-00115
INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES PLLC



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 27, 2014 to all counsel or parties of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

In addition, service has been made on the following defaulted Defendants via U.S. Mail to the last known address:

Mr. Dean Barnett
Ms. Brenda Barnett
4051 S. Wenatchee Rd.
Selah, WA 98942

Ms. Stephanie Housden
1206 Millerdale Ave.
Wenatchee, WA 98801

Mr. Andrew Lint
43603 E. Red Mountain Rd.
Benton City, WA 99230

Mr. Carlos Rodriguez
1415 S. 6th St. Apt. F2
Sunnyside, WA 98944

Mr. Rafael Torres
4211 W. Prasch Ave.
Yakima, WA 98908

Ms. Shannon Williams
5209 E. Oregon Road
Elk, WA 99009

s/ David A. Lowe

DECLARATION OF DAVID A. LOWE IN SUPPORT OF
MOTION FOR DEFAULT JUDGMENTS AND
PERMANENT INJUNCTIONS - 8
Civil Action No. 13-cv-00115
INIP-6-0002P03 DECDefJUDGMENT_DAL

LOWE GRAHAM JONES PLLC



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301